

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN SENATE JUNE 27, 2006

AMENDED IN SENATE JUNE 21, 2006

AMENDED IN SENATE JUNE 19, 2006

AMENDED IN SENATE MAY 30, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 630**

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**Introduced by Assembly Member Chu**  
**(Coauthor: Assembly Member Laird)**  
*(Coauthors: Senators Ortiz and Romero)*

February 17, 2005

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An act to amend Sections 22442, 22443.1, 22443.3, and 22445 of, and to add Sections 6126.4, 22441.1, and 22443.2 to, the Business and Professions Code, relating to immigration consultants.

### LEGISLATIVE COUNSEL'S DIGEST

AB 630, as amended, Chu. Immigration consultants.

Existing law provides for the regulation of a person engaged in the business or acting in the capacity of an immigration consultant. *Existing law requires an immigration consultant to file a bond with, and submit a disclosure form and a copy of a photograph identification to, the Secretary of State. Existing law requires the Secretary of State to post on its Web site information demonstrating that an immigration consultant is in compliance with the bond requirement.*

*This bill would also require an immigration consultant to submit his or her fingerprints and photograph to the Secretary of State and to pass a background check, and would require an immigration consultant's disqualification for specified reasons. The bill would require the Secretary of State to post on its Web site information demonstrating that an immigration consultant has passed the background check and a copy of his or her photograph, and would only allow posting of this information and the information regarding bond compliance if he or she has met those requirements. The bill would require the Secretary of State to issue a cease and desist order to a person who has failed to maintain a valid bond or to pass the background check, after giving the person an opportunity to demonstrate that grounds do not exist for the order, and to give notice of the failure to the Attorney General.*

*Existing law requires an immigration consultant to provide a client with a written contract prior to providing services. Existing law makes it unlawful for a person to disseminate any statement that the person acts or proposes to act as an immigration consultant without having a bond on file with the Secretary of State.*

*This bill would require an immigration consultant to include information in the written contract regarding reporting complaints to the California Department of Justice and the State Bar of California. The bill would also make it unlawful for a person to disseminate a statement that the person acts or proposes to act as an immigration consultant without having a disclosure statement on file with the Secretary of State.*

*Existing law makes a violation of ~~those~~ the provisions regulating immigration consultants a misdemeanor, subject to specified fines. Existing law requires a person regulated under those provisions to file a bond with and submit a disclosure form to the Secretary of State.*

*This bill would increase the minimum misdemeanor fine from \$2,000 to \$4,000 and would increase the maximum fine from \$10,000 to \$20,000. The bill would specify that an action for a violation of those provisions must be commenced within 4 years after discovery of the commission of the offense. ~~The bill would require an immigration consultant to pass a background check and would require the Secretary of State to disqualify an individual as an immigration consultant for specified reasons.~~*

*~~Existing law requires an immigration consultant to provide a client with a written contract prior to providing services.~~*

~~This bill would require the immigration consultant to include information in the contract regarding reporting complaints to the California Department of Justice and the State Bar of California. The bill would require the Secretary of State to issue a cease and desist order to a person who has failed to maintain a valid bond or pass a background check, and to give notice of the person's noncompliance to the Attorney General. The bill would require the Secretary of State to include an immigration consultant's photograph on its Internet Web site, and also post whether the immigration consultant has successfully passed the required background check.~~

~~Existing law makes it unlawful for a person to disseminate any statement that the person acts or proposes to act in the capacity of an immigration consultant without having a bond on file with the Secretary of State.~~

~~This bill would make it unlawful for a person to disseminate those statements without having a disclosure statement and bond on file with the Secretary of State.~~

~~Because the this bill would expand the scope of an existing crime create a new crime, the bill would impose a state-mandated local program.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 6126.4 is added to the Business and
- 2 Professions Code, to read:
- 3 6126.4. Section 6126.3 shall apply to a person acting in the
- 4 capacity of an immigration consultant pursuant to Chapter 19.5
- 5 (commencing with Section 22440) who advertises or holds
- 6 himself or herself out as practicing or entitled to practice law, or
- 7 otherwise practices law.
- 8 SEC. 2. Section 22441.1 is added to the Business and
- 9 Professions Code, to read:

1 22441.1. (a) A person engaged in the business or acting in  
2 the capacity of an immigration consultant shall satisfactorily pass  
3 a background check conducted by the Secretary of State.

4 (b) The Secretary of State shall disqualify an individual from  
5 acting as an immigration consultant for any of the following  
6 reasons:

7 (1) Conviction of a felony.

8 (2) Conviction of a disqualifying misdemeanor where not  
9 more than 10 years have passed since the completion of  
10 probation. A conviction after a plea of nolo contendere is deemed  
11 to be a conviction within the meaning of this paragraph. The list  
12 of disqualifying misdemeanors shall be the same as the  
13 disqualifying misdemeanors applicable to notaries public  
14 appointed and commissioned pursuant to Chapter 3 (commencing  
15 with Section 8200) of Division 1 of Title 2 of the Government  
16 Code.

17 (3) Failure to disclose any arrest or conviction in the  
18 disclosure form required pursuant to subdivision (c) of Section  
19 22443.1.

20 (c) ~~By January 1, 2008, the~~ The Secretary of State shall  
21 complete a background check on every person engaged in the  
22 business or acting in the capacity of an immigration consultant  
23 who was bonded and qualified pursuant to this chapter on or  
24 before December 31, 2006.

25 (d) *The Secretary of State shall not file a bond, disclosure*  
26 *form, or photograph from a person who has failed to pass the*  
27 *background check required by this section.*

28 SEC. 3. Section 22442 of the Business and Professions Code  
29 is amended to read:

30 22442. (a) Every person engaged in the business or acting in  
31 the capacity of an immigration consultant who enters into a  
32 contract or agreement with a client to provide services shall, prior  
33 to providing any services, provide the client with a written  
34 contract, the contents of which shall be prescribed by the  
35 Department of Consumer Affairs in regulations.

36 (b) The written contract shall include all provisions relating to  
37 the following:

38 (1) The services to be performed.

39 (2) The costs of the services to be performed.

1 (3) There shall be printed on the face of the contract in  
2 10-point boldface type a statement that the immigration  
3 consultant is not an attorney and may not perform the legal  
4 services that an attorney performs.

5 (4) The written contract shall list the documents to be prepared  
6 by the immigration consultant, and shall explain the purpose and  
7 process of each document.

8 (5) The written contract shall state the purpose for which the  
9 immigration consultant has been hired and the actions to be taken  
10 by the immigration consultant regarding each document,  
11 including the agency and office where each document will be  
12 filed and the approximate processing times according to current  
13 published agency guidelines.

14 (6) The written contract shall include a provision that informs  
15 the client that he or she may report complaints relating to  
16 immigration consultants to the Office of Immigrant Assistance of  
17 the Department of Justice. The written contract shall also include  
18 a provision stating that complaints concerning the unauthorized  
19 practice of law may be reported to the State Bar of California.  
20 These required provisions shall include the toll-free telephone  
21 numbers and Internet Web sites of those entities.

22 (c) An immigration consultant may not include provisions in  
23 the written contract relating to the following:

24 (1) Any guarantee or promise, unless the immigration  
25 consultant has some basis in fact for making the guarantee or  
26 promise.

27 (2) Any statement that the immigration consultant can or will  
28 obtain special favors from or has special influence with the  
29 United States Citizenship and Immigration Services, or any other  
30 governmental agency, employee, or official, that may have a  
31 bearing on a client's immigration matter.

32 (d) The provisions of the written contract shall be stated both  
33 in English and in the client's native language.

34 (e) A written contract is void if it is not written pursuant to  
35 subdivision (d).

36 (f) The client shall have the right to rescind the contract within  
37 72 hours of signing the contract. The contents of this subdivision  
38 shall be conspicuously set forth in the written contract in both  
39 English and the client's native language.

1 (g) An immigration consultant may not make the statements  
2 described in subdivision (c) orally to a client.

3 (h) This section does not apply to employees of nonprofit,  
4 tax-exempt corporations who help clients complete application  
5 forms in an immigration matter free of charge or for a fee,  
6 including reasonable costs, consistent with that authorized by the  
7 Board of Immigration Appeals under Section 292.2 of Title 8 of  
8 the Code of Federal Regulations.

9 SEC. 4. Section 22443.1 of the Business and Professions  
10 Code is amended to read:

11 22443.1. (a) (1) Prior to engaging in the business or acting  
12 in the capacity of an immigration consultant, each person shall  
13 file with the Secretary of State a bond of fifty thousand dollars  
14 (\$50,000) executed by a corporate surety admitted to do business  
15 in this state and conditioned upon compliance with this chapter.  
16 The total aggregate liability on the bond shall be limited to fifty  
17 thousand dollars (\$50,000).

18 (2) The bond may be terminated pursuant to Section 995.440  
19 of, and Article 13 (commencing with Section 996.310) of  
20 Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

21 (b) The bond required by this section shall be in favor of, and  
22 payable to, the people of the State of California and shall be for  
23 the benefit of any person damaged by any fraud, misstatement,  
24 misrepresentation, unlawful act or omission, or failure to provide  
25 the services of the immigration consultant or the agents,  
26 representatives, or employees of the immigration consultant  
27 while acting within the scope of that employment or agency.

28 (c) An immigration consultant who is required to file a surety  
29 bond with the Secretary of State shall also file a disclosure form  
30 with the Secretary of State that contains all of the following  
31 information:

32 (1) The immigration consultant's name, date of birth,  
33 residence address, business address, residence telephone number,  
34 and business telephone number.

35 (2) The name and address of the immigration consultant's  
36 agent for service of process if one is required to be or has been  
37 appointed.

38 (3) Whether the immigration consultant has ever been  
39 convicted of a violation of this chapter or of Section 6126.

1 (4) Whether the immigration consultant has ever been arrested  
2 or convicted of a crime.

3 (5) If applicable, the name, business address, business  
4 telephone number, and agent for service of process of the  
5 corporation or partnership employing the immigration consultant.

6 (d) An immigration consultant shall notify the Secretary of  
7 State's office in writing within 30 days when the surety bond  
8 required by this section is renewed, and of any change of name,  
9 address, telephone number, or agent for service of process.

10 (e) The Secretary of State shall post information on its *Internet*  
11 Web site demonstrating that an immigration consultant is in  
12 compliance with the bond required by this section and has  
13 satisfactorily passed the background check required under  
14 Section 22441.1, and shall also post a copy of the immigration  
15 consultant's photograph. The Secretary of State shall ensure that  
16 the information is current and shall update the information at  
17 least every 30 days. *The Secretary of State shall only post this*  
18 *information and photograph on its Internet Web site if the person*  
19 *has filed and maintained the bond, filed the disclosure form and*  
20 *photograph required to be filed with the Secretary of State, and*  
21 *passed the background check required by Section 22441.1.*

22 (f) The Secretary of State shall develop the disclosure form  
23 required to file a bond under this section and make it available to  
24 any immigration consultant filing a bond pursuant to this section.

25 (g) An immigration consultant shall submit *all of the following*  
26 *with the disclosure form* ~~from a form~~:

27 (1) A copy of valid and current photo identification to  
28 determine the immigration consultant's identity, such as a  
29 California driver's license or identification card, passport, or  
30 other identification acceptable to the Secretary of State.

31 (2) *His or her fingerprints and a photograph of him or her*  
32 *with the dimensions and in the style that would be acceptable to*  
33 *the U.S. Department of State for obtaining a United States*  
34 *passport, as instructed by the Secretary of State. An immigration*  
35 *consultant bonded on or before December 31, 2006, shall submit*  
36 *the fingerprints and photograph on or before July 1, 2007.*

37 (h) The Secretary of State shall charge and collect a filing fee  
38 to cover the cost of filing the bond.

39 (i) The Secretary of State shall enforce the provisions of this  
40 chapter that govern the filing and maintenance of bonds.

(j) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in an immigration matter free of charge or for a fee, including reasonable costs, consistent with that authorized by the Board of Immigration Appeals under Section 292.2 of Title 8 of the Code of Federal Regulations.

SEC. 5. Section 22443.2 is added to the Business and Professions Code, to read:

22443.2. (a) The Secretary of State shall issue a cease and desist order to a person subject to this chapter's provisions who has failed to comply with the provisions governing the filing and maintenance of bonds or who does not satisfactorily pass a background check required by Section 22441.1, and shall give notice of the person's noncompliance *or failure to satisfactorily pass the background check* to the Attorney General. *Prior to issuing a cease and desist order to a person pursuant to this subdivision, the Secretary of State shall provide the person with an opportunity to demonstrate that grounds do not exist for disqualification.*

(b) For orders issued for failure to comply with the provisions governing the filing and maintenance of bonds, the order shall include a statement that notice of the person's noncompliance shall be sent to the Attorney General.

SEC. 6. Section 22443.3 of the Business and Professions Code is amended to read:

22443.3. It is unlawful for any person to disseminate by any means any statement indicating directly or by implication that the person engages in the business or acts in the capacity of an immigration consultant, or proposes to engage in the business or act in the capacity of an immigration consultant, unless the person has on file with the Secretary of State a disclosure statement and a bond, in the amount *of*, and subject to the terms described in, Section 22443.1, that is maintained throughout the period covered by the statement, such as, but not limited to, the period of a ~~yellow pages~~ *Yellow Pages* listing.

SEC. 7. Section 22445 of the Business and Professions Code is amended to read:

22445. (a) (1) A person who violates this chapter shall be subject to a civil penalty not to exceed one hundred thousand dollars (\$100,000) for each violation, to be assessed and



1 collected in a civil action brought by any person injured by the  
2 violation or in a civil action brought in the name of the people of  
3 the State of California by the Attorney General, a district  
4 attorney, or a city attorney. An action brought in the name of the  
5 people of the State of California shall not preclude an action  
6 being brought by an injured person.

7 (2) The court shall impose a civil penalty for each violation of  
8 this chapter. In assessing the amount of the civil penalty, the  
9 court may consider relevant circumstances presented by the  
10 parties to the case, including, but not limited to, the following:  
11 the nature and seriousness of the misconduct, the number of  
12 violations, the persistence of the misconduct, the length of time  
13 over which the misconduct occurred, the willfulness of the  
14 defendant's misconduct, and the defendant's assets, liabilities,  
15 and net worth.

16 (3) Any action brought pursuant to this section by the Attorney  
17 General, a district attorney, or a city attorney shall also seek  
18 relief under subdivision (c) of Section 22446.5.

19 (4) If the Attorney General brings the action, one-half of the  
20 civil penalty collected shall be paid to the treasurer of the county  
21 in which the judgment was entered, and one-half to the General  
22 Fund. If a district attorney brings the action, the civil penalty  
23 collected shall be paid to the treasurer of the county in which the  
24 judgment was entered. If a city attorney brings the action,  
25 one-half of the civil penalty collected shall be paid to the  
26 treasurer of the city in which the judgment was entered, and  
27 one-half to the treasurer of the county in which the judgment was  
28 entered.

29 (b) In addition to the provisions of subdivision (a), a violation  
30 of this chapter is a misdemeanor punishable by a fine of not less  
31 than four thousand dollars (\$4,000) or more than twenty  
32 thousand dollars (\$20,000), as to each client with respect to  
33 whom a violation occurs, or imprisonment in the county jail for  
34 not more than one year, or by both fine and imprisonment.  
35 However, payment of restitution to a client shall take precedence  
36 over payment of a fine.

37 (c) A second or subsequent violation of Sections 22442.2,  
38 22442.3, and 22442.4 is a misdemeanor subject to the penalties  
39 specified in subdivisions (a) and (b). A second or subsequent

1 violation of any other provision of this chapter is a felony  
2 punishable by imprisonment in state prison.

3 (d) An action brought pursuant to this section shall be  
4 commenced within four years after discovery of the commission  
5 of the offense.

6 SEC. 8. No reimbursement is required by this act pursuant to  
7 Section 6 of Article XIII B of the California Constitution because  
8 the only costs that may be incurred by a local agency or school  
9 district will be incurred because this act creates a new crime or  
10 infraction, eliminates a crime or infraction, or changes the  
11 penalty for a crime or infraction, within the meaning of Section  
12 17556 of the Government Code, or changes the definition of a  
13 crime within the meaning of Section 6 of Article XIII B of the  
14 California Constitution.

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